

Not Reported in F.Supp.2d
 Not Reported in F.Supp.2d, 2003 WL 22204538 (E.D.La.)
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Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court,
 E.D. Louisiana.

Juan ALBARADO

v.

CHOUDEST OFFSHORE, LLC
 No. Civ.A. 02-3504.

Sept. 5, 2003.

Robert John Caluda, Metairie, LA, for Plaintiff.

Robert Perry McCleskey, Jr., William Joseph Riviere, Thomas Kent Ledyard Morrison, Todd Thompson, Phelps Dunbar, LLP, New Orleans, LA, for defendant.

BARBIER, J.

*1 Before the Court is the Motion in Limine to Strike Plaintiff's Liability Expert, filed by defendant United Marine Holdings. Rec. Doc. 44. Plaintiff opposes the motion. The motion, set for hearing on September 3, 2003, is before the Court on briefs without oral argument.

In its motion, defendant seeks to bar the testimony of Frank Buck, Sr., a purported "liability/vessel" expert, on the ground that Buck's testimony is not based upon scientific, technical or specialized knowledge, citing, *inter alia*, Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 479, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). Notably, the motion was filed prior to the parties' mutual consent to strike the jury in this case.

The purpose of *Daubert* is "to ensure that only reliable and relevant expert testimony is presented to the jury." *Rushing v. Kansas City Southern Ry. Co.*, 185 F.3d 496, 506 (5th Cir.1999) (superseded by rule on other grounds), citing *Daubert*, 509 U.S. 590-93, 113 S.Ct. 2786, --- L.Ed.2d ---. Thus, "[m]ost of the safeguards provided for in *Daubert* are not as essential in a case such as this where a district judge sits as the trier of fact in place of a jury." *Gibbs v. Gibbs*, 210 F.3d 491, 500 (5th Cir.2000). "*Daubert* requires a binary choice--admit or exclude--and a judge in a bench trial

should have discretion to admit questionable technical evidence, though of course he must not give it more weight than it deserves." *SmithKline Beecham Corp. v. Apotex Corp.*, 247 F.Supp.2d 1011, 1042 (N.D.Ill.2003).

Given that this case has been converted to a bench trial, and thus that the objectives of *Daubert* (upon which defendant's motion is premised) are no longer implicated, the Court finds that defendant's motion should be denied at this time. Following the introduction of the alleged expert testimony at trial, the Court will either exclude it at that point, or give it whatever weight it deserves. [FN1] Accordingly,

FN1. It goes without saying, however, that it is unnecessary for a proposed "expert" to perform simple mathematical calculations.

IT IS ORDERED that defendant's Motion in Limine to Strike Plaintiff's Liability Expert, Rec. Doc. 44, should be and is hereby DENIED.

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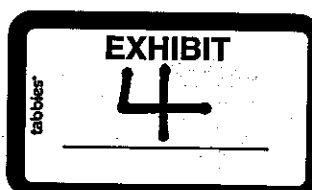
. 2003 WL 23862345T1 (Trial Motion, Memorandum and Affidavit) Pre Trial Memorandum (Dec. 3, 2003)

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